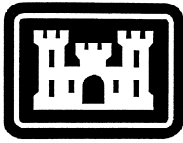


SPECIAL PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

**Notice to Prospective Missouri River
Commercial Sand Dredging Applicants**

Issue Date: February 21, 2008

30-Day Notice

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

BACKGROUND: On August 20, 2007, the Kansas City District issued a joint decision regarding commercial dredging operations in the Missouri River. In that decision we determined that due to increasing bed degradation throughout the river between St. Louis and Rulo, Nebraska, we would not be able to authorize any dredging after December 31, 2009, without completion of an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA). The St. Louis District, Corps of Engineers has agreed to participate in preparation of a joint EIS for all commercial dredging in the Missouri River within both districts.

ENVIRONMENTAL IMPACT STATEMENT: Regulations for implementing the procedural provisions of the NEPA (40 CFR 1506.5(c), http://www.usace.army.mil/cw/cecwp/library/NEPAComp_Guide.pdf) provide for use of third party contracts in preparation of agency EISs. The Council on Environmental Quality (CEQ), in its "Forty Questions" published in the March 23, 1981, Federal Register <http://www.usace.army.mil/publications/eng-regs/er200-2-2/entire.pdf> and <http://www.nepa.gov/nepa/regs/40/40p3.htm> stated the term "third party contract" referred to contractors paid by the applicant but selected by the agency. NEPA further stipulates that the contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the EIS is prepared under contract, the responsible agency must participate in the preparation and shall independently evaluate the statement prior to its approval. The agency must also take full responsibility for the scope and contents of the EIS.

THIRD PARTY CONTRACTING GUIDANCE: Corps Headquarters (HQUSACE) issued Regulatory Guidance Letters (RGLs, <http://www.usace.army.mil/cw/cecwo/reg/rglsindx.htm>) Nos. 87-05, 88-15 and 05-08 to address questions about applicant costs, information, and third party contracts for preparing EISs. In 1988, HQUSACE also published its *NEPA Implementation Procedures for the Regulatory Program* (appendix B, 33 CFR 325, <http://www.usace.army.mil/cw/cecwo/reg/33cfr325.htm#appendixB>) addressing "contracting" and information needs. Additionally, in the memorandum *Guidance on Environmental Impact Statement Preparation, Corps Regulatory Program*, dated December 17, 1997, the HQUSACE Director of Civil Works established third party contractors as the primary method of EIS preparation.

NOTICE TO POTENTIAL DREDGING APPLICANTS: In accordance with the regulations cited above, we are notifying all potential Missouri River commercial dredgers that if they want to be included as potential dredgers under the EIS, they have **30 days** from the date of this notice to provide this office with a permit application to dredge in 2010 and a list of third party contractors recommended

to prepare the EIS. Applicants desiring to cooperatively contract with other applicants should indicate such in their application, and we will provide a combined list of interested applicants and contact information those parties. Cooperative contracting would minimize duplication of effort and cost. The permit application form is online at <http://www.nwk.usace.army.mil/regulatory/eng4345.pdf>.

Participation in the EIS process is not limited to currently authorized dredgers and does not guarantee receipt of a permit to dredge. The proposed dredging activities will also be evaluated in accordance with the Clean Water Act Section 404(b)(1) guidelines (40 CFR 230) and may be authorized only if they are not contrary to the public interest and there are no less damaging practicable alternatives. Analysis conducted since the August 20, 2007, decision indicates that the rate of bed degradation in the Kansas City reach has increased even more. This and future analysis may indicate that dredging at the levels proposed is contrary to the public interest or that there are less damaging practicable alternatives such as further reduction or elimination of dredging in some areas.

The dredgers may cooperatively provide one list of preferred contractors or may provide their own individual lists. Using the applicant's order of preference, the Corps will select the first contractor on each list that has expertise in river hydro geomorphology, natural resource economics, aquatic and terrestrial ecology, and geology, that has experience preparing EISs, that demonstrates that they have no financial or other interest in the outcome of the EIS, and is fully acceptable to the Corps. Before the applicant can award the third-party contract, the Corps must approve in writing the third-party contractor and a scope of work and receive an executed disclosure statement, prepared by the Corps, specifying that the contractor has no financial or other interest in the outcome of the EIS. The applicants will be responsible for all contracts with and payment of the contractors and the Corps will not become involved in the specifics of the contracting process.

Once the third-party contractor(s) are selected, the Corps (rather than the applicants) will be responsible for directing their work and ensuring that the information they provide is consistent with Corps statutory requirements to take a hard, objective look at the public interest and environmental factors. The Corps will also take full responsibility for the scope and contents of the EIS, and regularly participate in the preparation of the document and independently evaluate the information to ensure that it is technically adequate and not biased. The Corps has the final determination of whether the data provided is adequate and accurate.

Failure to complete the EIS and permit evaluation by the end of 2009 would mean that all commercial sand dredging in the Missouri River would cease on January 1, 2010, and could not be re-authorized until the evaluation is complete.

CONTACT INFORMATION: If you have any questions concerning this matter, please call Mr. Cody Wheeler at 816-389-3739 (FAX 816-389-2032) or email Mr. Wheeler at cody.s.wheeler@usace.army.mil.

NOTE: This public notice is posted on the Kansas City District Regulatory web page and can be viewed at the following address: http://www.nwk.usace.army.mil/regulatory/public_notices.htm